



**CIVIL SOCIETY DIALOGUE
MEETING**
**STATE OF PLAY OF WTO NEGOTIATIONS ON E-COMMERCE, INVESTMENT
FACILITATION FOR DEVELOPMENT AND DOMESTIC REGULATION**

Date: 7 March 2023, 14.30-16.30

Location: Webex meeting

Lead speakers:

Head of Unit for Services and Digital Trade, DG TRADE, European Commission

Head of Unit for Investment and Intellectual Property, DG TRADE, European Commission

Trade Negotiators for services domestic regulation, investment facilitation for development and e-commerce

Presentation

COM (DG TRADE) welcomed participants and highlighted the importance of the three Joint Statement Initiatives on services domestic regulation, investment facilitation for development and e-commerce both systemically for the WTO, its negotiating function and relevance to modern trade, and for the EU business community. COM also highlighted that all Initiatives are open, transparent and inclusive. COM then proceeded in updating the participants about the background, state of play and next steps in the three Joint Statement Initiatives.

As regards **services domestic regulation**, COM recalled that the Joint Statement Initiative was launched in 2017 following unsuccessful multilateral efforts. After about 40 rounds, in 2021, 67 WTO Members concluded the negotiations on services domestic regulation and agreed on a reference paper that includes a set of disciplines that aim at increasing transparency, providing legal certainty and predictability and improving regulatory quality of licensing and qualification requirements and technical standards. The reference paper also includes provisions on special and differential treatment for developing and least developed country members, notably transitional periods, technical assistance and transparency. COM stressed that this outcome is significant for the WTO, as it is the first Joint Statement Initiative to be concluded, the first negotiated outcome on services in more than 20 years and the first WTO text that includes a provision on non-discrimination between men and women. Moreover, the outcome is important for businesses that can benefit from less red tape, more transparency and more streamlines licensing authorisation procedures.

COM also noted that, according to OECD research, an estimated 150 billion USD is to be reduced in trade costs for the global economy per year thanks to the implementation of the services domestic regulation disciplines. COM noted that the last step is to give legal effect to the negotiated outcome, with Members participating to the Joint Statement Initiative incorporating the reference paper in their schedule of commitments under the General Agreement for Trade in Services, via the so-called “certification process”. COM informed that two WTO Members have raised objections to this certification and that the certifying Members will need to enter into consultations aiming at the withdrawal of these objections.

As regards **investment facilitation for development**, COM highlighted the importance of this negotiation which seeks to address concrete problems faced by investors and increase the flow of FDI to developing countries. COM recalled that negotiations started upon the initiative of developing countries, and now gather more than 110 WTO Members from all continents and all levels of development, including 75 developing countries (among which 20 least-developed countries). The text-based negotiations are close to completion and there is a consensus on implementing the agreement through the same flexible mechanisms as in the WTO Trade Facilitation Agreement (whereby developing countries can schedule their commitments depending on whether they need additional time and support). COM provided information on the expected content of the future agreement, which would cover provisions on transparency, on streamlining of administrative procedure, on focal points, as well as on sustainable investment (anti-corruption and responsible business conduct). COM finally provided an overview of the next steps, starting with the finalisation of the text (possibly by 1st semester), the self-assessment by developing countries of whether they would need time/support to implement the agreement, and the integration of the agreement in the WTO rulebook. COM also quoted a recent study that showed significant positive impact for participating developing countries, as well as for non-participants.

As regards **e-commerce**, COM stressed that the negotiations are not only important for their economic importance, but that they are also essential for the credibility of the WTO itself, which needs to show it can deliver rules fit for the 21st century. To make this Joint Initiative a success, there is a need to ensure (1) a commercially meaningful agreement, (2) concluded by as many WTO Members as possible, and (3) integrated within the WTO framework. These are the EU's three key priorities in the negotiations. COM reported about monthly in-person negotiation rounds organised in Geneva since July 2022. The in-person negotiations have brought back the momentum. This can also be seen in the progress achieved so far – preliminary agreement has been reached on eleven articles. Negotiations are continuing on a number of articles (personal data protection, access to source code, revision of the telecommunications reference paper, ICT products that use cryptography) and stock-take sessions are organised to discuss other proposals that have not yet entered negotiations. With regard to the next steps, COM emphasised the importance of reaching an agreement on rules that enable and promote the free flow of data, that prevent in a permanent manner the imposition of customs duties on electronic transmissions, and that effectively protect source code and other proprietary information.

These are key elements of a commercially meaningful outcome. Specifically on data flows and data localisation, real negotiations are yet to start. As a first step towards the discussion on data flows, a small group negotiation on privacy was launched in summer last year. In addition to these provisions, COM stressed the importance of addressing the challenges that developing countries face in relation to the implementation of the disciplines negotiated. In terms of the timeline, COM explained that MC13 will be an important milestone and that the EU's objective is to reach a substantial agreement by then. Finally, COM reported from the ministerial meeting on the WTO e-commerce negotiations in Davos in January 2023 and emphasised that more political engagement will be needed.

Questions and Answers

As regards **services domestic regulation**, the **European Services Forum** inquired about the next steps in case the two objecting Members do not lift their objections. COM replied that the certifying members will enter into consultations with the objecting Members with the objective of addressing the concerns raised and finding a solution. Should these efforts prove unsuccessful, the certifying members will consider using other procedures envisaged by the WTO as their priority remains that the negotiated outcome becomes legally effective.

As regards **investment facilitation for development**, the **European Services Forum** asked whether developing countries will seek maximum flexibility in the implementation, and whether COM is starting to allocate funding to the implementation. COM replied that the experience for the Trade Facilitation Agreement is that developing countries used the flexibilities only when needed and that several developing countries did not ask for any flexibility, as they were ready to implement the agreement. The same situation is expected for the future investment facilitation for development agreement. Depending on the needs of developing countries, the EU will consider funding alongside other donor members. The EU is already financing pilot projects for the needs assessment phase. **Spirits Europe** asked if procurement for wines and spirits would be covered by the agreement. COM reply that public procurement is excluded from the agreement, while generally investment in the wines and spirits sector is covered (as the agreement apply across all sectors).

As regards **e-commerce**, the **Confederation of Portuguese Businesses** stressed the economic importance of these negotiations and noted that they are a unique opportunity to reach an agreement among the EU, US and CPTPP countries on the key issue of data flows. They furthermore noted that the negotiations are an important platform to discuss the e-commerce moratorium and work towards a permanent solution. **Spirits Europe** asked in which ways the negotiations facilitate the digitisation of customs processes. In reply, COM pointed to the heterogeneity in the level of development and digitisation among WTO members participating in the negotiations, which makes an agreement on ambitious rules in this regard challenging. Nevertheless, an excellent outcome has been reached on a discipline on paperless trade (more ambitious than FTA practices of some developed countries) that binds Members to ensure that forms issued or controlled by their customs authority for import, export or transit of goods through their territory are available in an electronic format as well as to accept electronic forms required by customs authorities as the legal equivalent of the paper version of those documents.

ESF asked about the link between the negotiations and the multilateral e-commerce moratorium and in particular whether there could be a vacuum if the multilateral moratorium was not extended until a permanent moratorium was agreed plurilaterally in the e-commerce negotiations. **ESF** furthermore argued that the EU was entering a phase of protectionism, notably with the new cloud computing certification scheme and the recent legislation such as Data Act, which renders it more complicated for foreign companies to transfer non-personal data. In reply, **COM** explained that the multilateral moratorium is a political commitment without legal effects. **COM** stressed that the extension of the multilateral moratorium remains the EU's key priority. **COM** furthermore explained that the EU policy is not protectionist and has no unjustified limitations on companies to transfer non-personal data internationally. However, **COM** emphasised the importance of staying abreast of new and growing cybersecurity challenges and therefore, when appropriate, providing stronger guarantees against a number of growing risks of unauthorised access to cloud computing infrastructure and the data which it handles, as well as transfers of sensitive data carried out without consent by data owners. The **Belgian Confederation of Christian Trade Unions** asked about the role of the negotiations in addressing issues of unrepresented developing countries. They also inquired how an agreement could be reached between EU, US and China on the provisions on data flows and access to source code. In the same vein, **Jacques Delors Institute** asked for the differences in the approaches on data among EU and US and asked whether an agreement would be accepted without a solution on data flows. In reply, **COM** explained that an agreement on data flows and source code is essential for a commercially meaningful outcome. Reaching an agreement on these issues will require flexibility and political commitment of all members and will require a solution that is respectful of all non-protectionist regulatory frameworks. **COM** furthermore explained that the negotiations are not trying to solve the digital divide, but that the facilitation of digital trade helps all economies, and particularly those of developing countries. **COM** also pointed out to the e-commerce Work Programme, which is a multilateral forum for addressing development-related issues in relation to e-commerce. **Digital Europe** emphasized the economic value of data flows and an effective protection of source code of businesses when exporting to third markets. They furthermore stressed the importance of reaching a permanent solution for the multilateral e-commerce moratorium.

A member of the **EESC** asked whether any WTO agreement can be concluded in the context of war in Ukraine. **COM** explained that the EU does not engage in negotiations with Russia directly and that this is a horizontal question affecting all decision making in the WTO. Finally, the **Confederation of Portuguese Businesses** offered its support for all three Joint Statement Initiatives, highlighting their importance for the credibility and the negotiating function of the WTO.
